

The traversal is made on the grounds that restriction to a single nucleotide sequence is inappropriate. The reason provided for the separate election of nucleotide sequences is that "each nucleotide and amino acid sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention." This statement is incorrect. The claimed invention is based in part on the discovery that UCP is present in cellular membranes other than the mitochondrial membrane, i.e. cell wall membrane, and that the presence or absence of UCP in different membranes has important implications for the regulation of plant cell metabolism. The claimed invention encompasses a plant expressing a heterogonous UCP in the cell wall membrane. Applicant is not claiming a new type of UCP. Thus, the different sequences of UCP should not be considered to be a separate invention. If the sequences of UCP remain subject to a restriction requirement, at a minimum they should be considered to be a species of a single genus of UCP molecules.

Having made this election, Applicants expressly reserve the right to file one or more divisional applications on the subject matter of the nonelected claims.

### **CONCLUSION**

If this response is not considered timely filed and if the extension of time is otherwise absent or incorrect, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

***Martha K. Newell et al., Applicants***



Helen C. Lockhart, Ph.D, Reg. No. 39,248  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2211  
Telephone: (617) 720-3500